

**ORIGINAL**

DEPARTMENT OF TRANSPORTATION

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

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DOC. SECTION

Application of

AMERICAN INTERNATIONAL AIRWAYS, INC.)

for an exemption pursuant to  
49 U.S.C. § 40109 (Brazil frequencies)

Docket OST-

98 3780-1

**APPLICATION OF  
AMERICAN INTERNATIONAL AIRWAYS, INC.  
FOR AN EXEMPTION**

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AIRWAYS, INC.**

Dated: April 22, 1998

**NOTICE:** Applicant has requested answers to be filed by April 28, 1998. Counsel will conduct a telephone poll of all parties served.

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U.S. DEPARTMENT OF TRANSPORTATION  
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**APPLICATION OF  
AMERICAN INTERNATIONAL AIRWAYS, INC.  
FOR AN EXEMPTION**

Pursuant to 49 U.S.C. section 40109 and Subpart Q of the Department's Rules of Practice, American International Airways, Inc. ("AIA") hereby requests an exemption from the QO-day dormancy condition of Order 96-6-12, under which 5.5 of the 6.5 **widebody** frequencies allocated to AIA in that order would automatically revert to the Department on May 1, 1998. AIA requests that it be granted an additional QO-day period in which to reinstitute its **Miami-São Paulo** service.

In support of this request, AIA states as follows:

1. By Order 96-6-12 the Department granted AIA a five-year experimental certificate of public convenience and necessity to operate scheduled

all-cargo service between Miami and four points in Brazil. Immediately after receiving grant of authority from the Brazilian government, AIA commenced scheduled service in September 1996, operating a schedule of three weekly flights between Miami and São Paulo (Viracopos) and once weekly between Miami and Manaus.

2. AIA's Brazilian service overall has been quite successful, and has affirmed the wisdom of AIA's operating proposal and the Department's decision to select it for the third U.S. all-cargo designation. AIA has experienced nearly full loads on all of its southbound flights, though the northbound legs, not surprisingly have been light. It has not had to resort to carriage of Fifth Freedom cargo to supplement its U.S.-Brazil service, but has dedicated its service entirely to the Third and Fourth Freedom markets.

AIA has relied primarily on B-747-100 aircraft for its service, though it has occasionally used L-101-1 or DC-8 aircraft to maintain its service when demand did not warrant use of a full B-747. This has occurred mainly in the Manaus market, and has confirmed that the variety of aircraft in AIA's fleet does give it an important measure of flexibility in responding to market fluctuations.

3. The one serious problem AIA has experienced in its Brazil service is the unavailability or inadequate availability of a B-747-200 for its Miami-Viracopos operation. As AIA identified in its rebuttal exhibits in Docket OST-95-316 (Exhibit AIA-T-1, page 9), the B-747-100 has a fully loaded range of approximately

six hours, too short for the 7.5 hour MIA-VCP flight. This has necessitated a technical stop en route, adding greatly to the cost of the operation in a very price-competitive market.

4. AIA had planned to use one of its B-747-200s for the Viracopos operation, and rely primarily on the -100 for the shorter Manaus service, as it indicated in its service proposal in 1995. Indeed, this is still **AIA's** intent. The three B-747-200s now in **AIA's** fleet, however, cannot be used for the Brazil service. One of these aircraft is grounded due to the FAA Airworthiness Directive on the GATX-modified B-747 cargo conversion. GATX has been working diligently on developing an engineering solution to the problem identified by the FAA, and at the time AIA instituted its Brazil service, it expected this aircraft soon to be available for use, based on assurances from GATX. The other two B-747-200s have been firmly committed for other contract operations, and cannot be used on a regular basis for the Brazil service. AIA has attempted to dry lease a -200 for use on this route, but found that none were available. Finally, AIA has now purchased three additional -200s from Middle East Airlines, to be converted into cargo configuration. The first of these modifications was due to be completed in January of this year, and the aircraft was to be placed in the Brazil service. Engineering problems, however, continue to delay that delivery.'

5. As a result of the unavailability of appropriate aircraft for the

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<sup>1</sup> The remaining two B-747-200s are still being operated by MEA under a short-term lease from AIA, and will not be converted to cargo configuration until mid to late summer.

VCP operation, AIA was unable to maintain its contract with International Air Charters ("IAC"), a large consolidator and broker that has acted as AIA's general sales agent for its Brazil service, which insisted on use of -200 aircraft due to the superior economics. IAC has now made arrangements for alternative lift. As a result, AIA stopped flying its Miami-Viracopos service on January 30. It has, however, continued to operate flights to Manaus, carrying cargo from other sources. Thus, according to AIA's calculations, all but the one weekly Manaus frequency would revert to the Department according to the terms of Order 96-6-12 on May 1, 1998.

6. AIA intends to resume its scheduled service to Viracopos as soon as it can take delivery of its modified B-747-200 aircraft and complete contractual arrangements with one or more consolidators to provide adequate cargo for the service. The aircraft is now expected to be out of modification in June, though further delays are possible. Further, AIA is working to make the necessary commercial arrangements to resume its service; it cannot yet predict when those arrangements will be completed. Accordingly, AIA believes that an additional 90 days may be necessary before it will be in a position to resume full scheduled service.\* AIA will, of course, resume this service at the earliest possible time, and will keep the Department apprised of its status.

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<sup>2</sup> AIA makes this request with respect only to the two **widebody** frequencies used for the MIA-VCP service. It has not been able to make adequate use of the 3.5 remaining frequencies to enable it to make a good faith claim to these frequencies, and therefore the Department should consider them relinquished.

7. It would be to the advantage of the Department and the U.S.-Brazil cargo market to grant the requested exemption and retain AIA as a presence in that market. Its participation has greatly increased the capacity available to shippers and forwarders, and enhanced the competitiveness of the market. To allow AIA's frequencies to revert, however, would eliminate a significant competitor, and would necessitate a time-consuming reallocation proceeding, the likely result of which would not be to significantly hasten the resumed use of the frequencies in issue.

WHEREFORE, AIA requests the Department to exempt it from the 90-day dormancy condition of Order 96-6-12, and to grant it an additional 90 days in which to resume its scheduled Miami-São Paulo (VCP) cargo service.<sup>3</sup>

Respectfully submitted,



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Attorneys for  
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AIRWAYS, INC.**

Dated: April 22, 1998

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<sup>3</sup> AIA regrets the short notice on which this request is filed; it had hoped that developments on the technical and commercial issues described above would obviate the necessity of making this request.

## CERTIFICATE OF SERVICE

I, Terri Davis, certify that I have, this 22nd day of April, 1998, served the foregoing Application of American International Airways for an Exemption by facsimile on the following:

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A handwritten signature in cursive script, reading "Terri Davis", positioned above a horizontal line.

Terri Davis